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No. 86-14

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

VERNON C. BUCKLEY,
Appellant

v.

COMMONWEALTH OF PENNSYLVANIA,
Appellee

On Appeal from the Supreme Court of Pennsylvania

MOTION TO AFFIRM

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MOTION TO AFFIRM

The Commonwealth of Pennsylvania, by its attorneys, hereby asks this Court to affirm the judgment of the Supreme Court of Pennsylvania, dated April 14, 1986, on the grounds that the questions on which the decision of this appeal depends are so insubstantial as not to need further argument.

ARGUMENT

This appeal challenges the constitutionality of a reciprocal tax agreement between the states of Pennsylvania and New Jersey. Under the agreement, each state exempts from taxation certain income earned within its borders by residents of the other state. This exemption, however, applies only to wages and salaries -- "compensation" within the meaning of the agreement -- and not to other forms of income, such as net profits. The agreement expressly provides that

> [nothing] in this agreement shall be interpreted to exempt a resident of Pennsylvania or New Jersey who has taxable income in the Commonwealth or State of nonresidence from liability for payment of income or filing an income tax return with regard to such other taxable income. (Emphasis added.)

(Juris. Statement at A-57, emphasis added.) See Pa. Stat. Ann. Title 72, §7356(b) (Purdon 1986 Supp.) authorizing reciprocal agreement exempting compensation); id., §7303(a)(1) (Purdon 1986 Supp.) (defining "compensation").

The appellant, Vernon Buckley, is a physician who lives in New Jersey and practices in Pennsylvania. (Juris. Statement at A-33, A-34.) His Pennsylvania income is not "compensation" within the meaning of the agreement, but rather takes the form of net profits from his practice. See Pa. Stat. Ann. Title 72, §7303 (a)(1), (2) (Purdon 1986 Supp.) (distinguishing "compensation" from "net profits").

Dr. Buckley's income is therefore not exempt from taxation under the agreement. (Juris. Statement at A-4). In this appeal, he contends that the agreement's failure to extend the exemption to "net profits" as well as "compensation" violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution and that the agreement as a whole violates the Compact Clause of Article I, §10. For the reasons that follow, those contentions are so devoid of substance as not to require further argument.

I. THE RECIPROCAL TAX AGREEMENT IS RATIONALLY RELATED TO LEGITIMATE STATE PURPOSES.

The standard which state tax classifications must meet is well-settled. In

Allied Stores of Ohio v. Bowers, 358 U.S. 522 (1959), the Court upheld the constitutionality of a state ad valorem tax applying to warehouse contents owned by residents, but not to those owned by nonresidents. The Court stated:

> The state must proceed upon a rational basis and may not resort to classification that is palpably arbitrary. The rule often has been stated to be that this classification "must rest upon some ground of difference having a fair and substantial relation to the object of the legislation" . . . If the selection or classification is neither capricious nor arbitrary and rests upon some reasonable consideration of difference or policy, there is no denial of equal protection of the law.

385 U.S. at 527 (citations omitted).

In this case, the Pennsylvania Supreme Court remarked that:

> while the appellant asserts that the taxing scheme permitted by the agreement is irrational, he does little to demonstrate the unreasonableness he perceives. The mere assertion that there is no justification for the distinction between wage earners and self-employed persons cannot be

considered sufficient to meet the challenger's heavy burden of proof.

Commonwealth v. Buckley, ___ Pa. ____, 508 A.2d 281, at 282-283 (1985).

Generally speaking, it is rational for a state to distinguish between wage earners and self-employed persons; and such a classification does not violate the Constitution. Commonwealth v. Life Assurance Company of Pennsylvania, 419 Pa. 370, 214 A.2d 209, appeal dismissed 384 U.S. 268 (1966). As embodied in the agreement at issue in this appeal, the distinction serves several legitimate purposes, most of which turn on the fact that wages and salaries are subject to withholding, while net profits are not.

The agreement fosters comity and cooperation with the state of New Jersey in the creation of an orderly, convenient and uncomplicated method of

collecting and reporting personal income tax withholding monies. It prevents double taxation. It alleviates certain administrative burdens on taxpayers who are subject to withholding in a state other than their state of residency. The agreement also assists the states in enforcement of their respective withholding provisions against employers. See, Akers Motor Lines, Inc. v. State Tax Commissioner, 344 Mass. 359, 182 N.E.2d 476 (1962); Clement v. Stone, 1985 Miss. 770, 13 So. 2d 647 (1943). None of these purposes would be furthered by extending the agreement to income not subject to withholding.

Pennsylvania therefore has a rational basis for its classification. Hence, the decision of the Pennsylvania Supreme Court should be affirmed without further argument.

II. THE RECIPROCAL AGREEMENT COMPORTS WITH THE COMPACT CLAUSE.

Appellant contends that, because New Jersey and Pennsylvania did not obtain the consent of the United States Congress, the Reciprocal Agreement violates Article I, Section 10, of the United States Constitution. That section states:

> No state shall, without the Consent of Congress . . . enter into any Agreement or Compact with another state . . .

Article I, Section 10, U. S. Constitution.

In U. S. Steel Corp. v. Multi-State Tax Commission, 434 U.S. 452 (1978), the Court held that the creation of a Multi-State Tax Commission did not

violate the Compact Clause since it did not increase the political power of the states nor interfere with the supremacy of the federal government. See, Bode v. Barrett, 344 U.S. 583 (1953); Cuyler v. Adams, 449 U.S. 433 (1981). Similarly, the Reciprocal Agreement entered into by New Jersey and Pennsylvania taxing authorities does not enhance the states' power while encroaching upon the supremacy of the United States Government. It does not permit Pennsylvania or New Jersey to "exercise any power they could not exercise in its absence but merely facilitates comity and cooperation between states." Buckley v. Commonwealth, 81 Pa. Cmwlt. Ct. 530, 475 A.2d 160, 164, affirmed, ___Pa.___, 508 A.2d 281 (1985); See also, Fraser v. Fraser, __ R. I. ___, 415 A.2d 1304 (1980).

The reciprocal exemption provision is legally sound and administratively desirable and it is not violative of the Compact Clause.

CONCLUSION

For the reasons stated herein, the Appellee respectfully submits that the questions upon which this appeal depends are so insubstantial as not to need any further argument, and Appellee respectfully moves the Court to affirm the judgment by the Supreme Court of Pennsylvania.

Respectfully submitted,

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